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ABSTRACT

The California Women's Law Center (CWLC) works to ensure, through systemic change, that the life opportunities for women and girls are free from unjust social, economic, and political constraints. As part of this mission, the CWLC collaborated with California's Los Angeles Unified School District (LAUSD) to develop comprehensive written policies regarding the rights of pregnant and parenting students. The CWLC encourages all schools to adopt comprehensive policies on the rights of pregnant and parenting students. To assist schools in this effort, the CWLC has written this "Model Policy on the Civil Rights of Pregnant and Parenting Students." The document is also intended to be a resource for pregnant and parenting students and their advocates. It provides background information on federal law. Seven sections address (1) "Federal and State Law Protect the Rights of Pregnant and Parenting Students"; (2) "Right to a Complete and Equal Education"; (3) "Attendance"; (4) "Schools Shall Make Reasonable Adjustments to Facilitate Pupils' Full Participation in all School Programs"; (5) "Alternatives to Regular Attendance"'; (6) "Right to Confidentiality and to Consent to Medical Care"; and (7) "Complaints." A physician's referral form is attached. (Contains 22 footnotes.) (SM)

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Federal Model Policy on the Civil Rights of Pregnant and Parenting Students

The mission of the California Women's Law Center (CWLC) is to ensure, through systemic change, that the life opportunities for women and girls are free from unjust social, economic, and political constraints. As part of this mission, CWLC collaborated with the Los Angeles Unified School District (LAUSD) to develop comprehensive written policies regarding the rights of pregnant and parenting students. The LAUSD distributed these policies in the form of a 22-page Bulletin to all schools and offices on October 15, 2001, and thus took an important step toward protecting the civil rights of pregnant and parenting students.

CWLC encourages all schools to adopt comprehensive policies on the rights of pregnant and parenting students. To assist schools in this effort and through a grant from the California Wellness Foundation, CWLC has written this Model Policy on the Civil Rights of Pregnant and Parenting Students. CWLC also provides this document as a resource for pregnant and parenting students and their advocates.

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TABLE OF CONTENTS

I. FEDERAL AND STATE LAW PROTECT THE RIGHTS OF PREGNANT AND PARENTING STUDENTS 4

II. RIGHT TO A COMPLETE AND EQUAL EDUCATION 6

III. ATTENDANCE 8

IV. SCHOOLS SHALL MAKE REASONABLE ADJUSTMENTS TO FACILITATE PUPILS' FULL PARTICIPATION IN ALL SCHOOL PROGRAMS 10

V. ALTERNATIVES TO REGULAR ATTENDANCE 11

VI. RIGHT TO CONFIDENTIALITY AND TO CONSENT TO MEDICAL CARE 13

VII. COMPLAINTS 15

EXHIBIT A: PHYSICIAN'S REFERRAL FORM 17

California Women's Law Center, 2003

Model Policy[1]

XYZ School District's Policy on the Rights of Pregnant and Parenting Students

TO: All School Administrators and Staff
FROM: XYZ Superintendent

Although many schools throughout our nation have implemented successful programs to prevent teen pregnancy, the rights of teens who parent have often been neglected. The decision to parent, however, is not the decision to abandon one's education. Pregnant and parenting teens have the same rights to educational and extracurricular opportunities as all students and the same obligations under state law to attend school. Accordingly, XYZ School District recognizes and protects the educational rights of pregnant and parenting students, consistent with federal and state law. This school district policy clarifies those rights to ensure compliance by administration, faculty, and students. Please contact [_____][2] if you have any questions about this policy or the rights of pregnant and parenting students.

[1] This Model Policy is intended to provide background information on federal law only. It should not be construed as legal advice and receiving or reading this document does not make you a client of CWLC. Local counsel in each school district should be consulted regarding the adoption and implementation of this or any other policy, as well as the school district's additional obligations under state law. If you have questions regarding this Model Policy, please contact the author, Nancy Solomon, Senior Staff Attorney. CWLC thanks Rebecca Yee and Windy Watson for their invaluable research assistance and comments in writing this model policy.

[2] All School Districts should have an office that is dedicated to Educational Equity (Title IX) Compliance. Individuals with questions about the school district's policies or the law regarding pregnant and parenting students should be referred directly to particular individuals within this office.

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I. FEDERAL AND STATE LAW PROTECT THE RIGHTS OF PREGNANT AND PARENTING STUDENTS[3]

A. Federal Law

Title IX of the Education Amendments of 1972 guarantees equal educational opportunities to pregnant and parenting students.[4] Moreover, federal regulations implementing Title IX clarify the legal protections provided therein for the educational rights of pregnant and parenting students.[5] Under these regulations, schools receiving federal financial assistance must:

- not discriminate against a student, or exclude a student from an educational program or activity – including any class or extracurricular activity – on the basis of the student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student voluntarily participates in a separate portion of the program or activity;

- not require a pregnant or parenting student to produce a doctor's certification that the student is physically and emotionally able to participate in a program or activity, unless such a certification is required of all students for other physical or emotional conditions requiring a doctor's attention;

- ensure that if it operates a portion of its educational program or activity separately for pregnant students – admittance to which is completely voluntary as provided for above – that the program or activity is comparable to that offered to non-pregnant students;

- treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan, or policy which such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity; and

- ensure that if the school does not maintain a leave policy for students – or in the case of a student who does not otherwise qualify for leave under such a policy – they shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence for a period of time deemed medically necessary by the student's physician, and, at the conclusion of such leave, the student must be reinstated to the status which she held when the leave began.[6]

Furthermore, school district policies and rules that may appear neutral, but that have the effect of disproportionately harming students of a particular sex, may be illegal. For example, a school or district policy that prohibits parents from bringing children under the age of six onto

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[3] Legal Counsel in each district should add the applicable state law protections in section B below.
[4] 20 U.S.C. § 1681.
[5] 34 C.F.R. § 106.40
[6] 34 C.F.R. § 106.40.

California Women's Law Center, 2003

school property may violate Title IX if it was established to prevent female students from bringing their babies to school or if it has a disproportionate affect on female rather than male students. Moreover, Title IX and its implementing regulations prohibit discrimination in programs and activities not directly run by the school or the district, but that are part of the school's educational programs. Such programs include, but are not limited to, study-abroad and exchange programs, affiliated extracurricular programs, and programs or activities offered in conjunction with other institutions.[7]

B. State Law

Legal counsel in each state should be consulted to determine whether, or to what extent, state law prohibits discrimination by any educational institution that receives, or benefits from, state financial assistance or enrolls pupils who receive state student financial aid.

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[7] *Chipman v. Grant Co. School District*, 30 F. Supp. 2d 975 (E.D. Ky. 1998) (Title IX prohibits pregnancy discrimination by National Honor Society).

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II. RIGHT TO A COMPLETE AND EQUAL EDUCATION

A. Pregnant and Parenting Students Have the Right to Remain in Their Comprehensive Schools and to Participate in All School Programs

Although the XYZ district provides _____ [describe here the District's or County's alternative schools and programs, if any, for pregnant and parenting students], students must be informed that their enrollment in such a program is completely voluntary. Failure to provide a student this information or coercing a student to participate in an alternative program is illegal.[8] Accordingly, all staff, administration, and faculty must act consistent with and not violate students' rights as outlined herein:

- A pregnant or parenting teen may continue to participate in honors and magnet programs, special education placements, alternative or options programs, extracurricular, intramural, and inter-scholastic activities, club athletics, and graduation programs or activities, as well as non-public school programs funded by the students' district.

- Students cannot legally be expelled, suspended, or otherwise excluded from their current educational or extracurricular program, or required to participate in school programs solely on the basis of the students' pregnancy, childbirth, pregnancy recovery or termination, conditions related to pregnancy, or marital or parental status.

- Pregnant or formerly pregnant students cannot be compelled to provide medical certification that they are physically and emotionally able to continue their participation in a school activity or program unless such certification is required of all pupils with other health conditions or temporary disabilities requiring a doctor's care.

If, after being informed that the option is completely voluntary, a student chooses to transfer to another school or program, a guidance counselor shall meet with the student to assess the student's school credits and to ensure that the student's educational needs and goals are protected during the transition to the new school or program. Additionally, students shall be informed of their right to transfer back to their comprehensive school or program and the procedure for doing so. (See Section V(B) below regarding procedures to follow prior to a student's transfer to an alternative school or program.)

B. Right to Participate in Physical Education Classes

State law requires students to attend physical education classes.[9] Accordingly, pregnant and parenting students must not be excluded from full participation in physical education classes and activities, and to the extent necessary, all efforts shall be made to accommodate students' participation in physical education. The benefits of physical education, particularly for girls, are astounding: lower pregnancy and sexual activity rates, development of leadership and teamwork

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[8] 34 C.F.R. § 106.40(b).

[9] Legal counsel should add cites to their state's laws pertaining to physical education requirements.

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skills, lower school drop-out rates, improved physical and mental health, and the ingraining of life-long, healthy habits associated with regular physical activity.[10]

- Pregnant or formerly pregnant students who cannot accomplish the requirements of the regular physical education curriculum shall be provided with an alternative curriculum that will accommodate her condition and provide her with a physical education credit.[11]

- Pregnant or formerly pregnant students shall not be required to provide a medical certification that they are physically and/or emotionally able to continue participation in physical education classes unless such certification is required of all students with physical or emotional conditions that require the attention of a physician.[12]

- If medical certification is required for a student to participate in physical education activities, the "Sample Physician's Referral Form" available in XYZ's School District's Pregnant and Parenting Teen Programs Office must be used. [A sample form is attached to the Model Policy as Exhibit A][13]

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[10] *The Women's Sports Foundation Report: Sport and Teen Pregnancy* (May 1998); Teens who report depression are more likely to become parents than their peers. Horwitz et al., *Physical Activity and Sport in the Lives of Girls*, President's Council on Physical Fitness and Sports Report (1997) at 168.

[11] 34 C.F.R. § 106.40(b)(1)&(3).

[12] 34 C.F.R. § 106.40(b)(2).

[13] The California Department of Education's Cal-SAFE Program developed the attached Sample Physician Referral Form, which was last revised in 2000.

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III. ATTENDANCE

All states have compulsory education laws for minors. Pregnant and parenting students may not be able to fulfill the full-time requirements due to the responsibilities associated with pregnancy and parenting. This factor contributes significantly to high dropout rates among pregnant and parenting students. This school district is dedicated to addressing the attendance difficulties of pregnant and parenting students to ensure that they finish high school, thus enabling them to provide a more stable life for themselves and their children. Accordingly, and in compliance with federal and state law, school administrators and teachers must strictly adhere to the rights of pregnant and parenting students in relation to school attendance, which are defined below.

A. Absences Due to a Pregnant or Parenting Student's Own Illness Are Excused

Absences for pregnant or parenting students' own illness shall count as excused absences. A student may be absent for one day or may require extended leaves of absence. Administrators and teachers should be aware of and abide by the following rules:[14]

- If a pregnant or parenting student misses school due to pregnancy or related conditions (including childbirth, miscarriage, termination of pregnancy and recovery therefrom), the absence shall be considered an excused absence. [15]

- When a student needs to take a leave of absence, the excused leave of absence shall last for as long a period of time as deemed medically necessary by the student's doctor.[16]

- A doctor's note may be required for verification of medically related absences, but only if such verification is required of all students for absences due to other medical conditions.[17]

- Upon returning from an excused absence, a student shall be reinstated at the school with the same status as before the leave began.[18] Additionally, the student shall be allowed to complete all assignments and tests missed during the absence that can be reasonably provided and, upon satisfactory completion within a reasonable time, shall be given full credit.

- Teachers shall determine the tests and assignments that will be provided to absent students and such tests and assignments must be reasonably equivalent to, but not necessarily identical to, the tests and assignments that the pupil missed during the absences.

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[14] Legal counsel should be consulted regarding whether state law specifically addresses absences for medical reasons for pregnant and parenting students.
[15] 34 C.F.R. § 106.40(b)(5).
[16] Id.
[17] Id.
[18] Id.

California Women's Law Center, 2003

- Students shall be informed of these rights and accommodations so that they are aware of the options available to them.

This attendance policy complies with the mandates of Title IX and state law and supersedes a school's individual attendance policy. Students who meet the requirements of this section may not be denied privileges or the right to participate in any school activities due to their absence.

B. Absences to Care for a Student's Sick Child

In accordance with state law, a student shall be excused from school due to an illness or medical appointment during school hours for a child for whom the pupil is the custodial parent.[19] Students who are absent under this section are allowed to complete all assignments and tests missed during their absence, or a reasonable equivalent, and, upon satisfactory completion, shall be given full credit.

[19] Legal counsel should add cites to their state's laws pertaining to absences as a result of a student's sick child.

IV. SCHOOLS SHALL MAKE REASONABLE ADJUSTMENTS TO FACILITATE PUPILS' FULL PARTICIPATION IN ALL SCHOOL PROGRAMS

Schools shall make reasonable adjustments to facilitate the full participation of pregnant and parenting students in all school programs and activities. Such reasonable adjustments, implemented on a case-by-case basis, might include, but are not limited to:

- providing passes for bathroom use as needed;
- scheduling classes in more accessible locations when possible;
- providing additional time for class changes;
- providing access to elevators when possible;
- arranging for school-based independent study programs when a student is absent because of pregnancy or while recovering from childbirth, if pupil's health permits;
- providing alternative activities in physical education programs when requested by the student and her medical provider;
- making allowances and arrangements – such as reduced schedule of classes or student contracts – as would be done for students with other medical conditions that prohibit full-day school participation; and
- [For schools using a "track" system, allowing students to change tracks in order to minimize missed classes during recovery from childbirth.]

V. ALTERNATIVES TO REGULAR ATTENDANCE

A school may operate a portion of its education program or activity separately for pregnant or parenting students. Students may also consider enrolling in an adult education program or other forms of study that will provide them with flexible hours and requirements. [School districts that offer particular alternative programs or activities for pregnant and parenting students should describe them more fully in this section.] If schools choose to offer alternative education programs, the law requires that:

- the alternative program or activity must be comparable to that offered to students who are not pregnant or parenting[20]

- the pregnant or parenting student's participation in such program or activity is completely voluntary. To guarantee that each school is in compliance with this legal requirement, schools shall inform students that:

    - their decision to participate in one of XYZ's District's alternative programs or activities is completely voluntary;

    - because college preparatory courses, honors classes, laboratory science, and advanced placement courses may not be available at the alternative program, the pregnant or parenting student will not be denied access to their home school's programs.

A. Alternative Programs for Pregnant and Parenting Students [Optional Section]

School Districts should describe in more detail in this section other alternatives for pregnant and parenting students offered in their districts. Such alternatives may include:

- Continuation Schools
- Adult Education
- Evening and Special Day Classes
- Court and Community Schools
- Opportunity Schools
- Independent Study
- Home and Hospital Instruction
- Distance Learning
- 24-Hour Schools
- Alternative Education and Work Center/Educational Clinics
- Pregnant Minor Programs
- Community Service Classes

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[20] 34 C.F.R. § 106.40(b)(3).

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B. Facilitating the Transfer While Protecting the Student's Academic Goals

Prior to a student transferring to an alternative school or program, school counselors and teachers shall do the following:

- Meet with the student to carefully evaluate the student's credits to ensure that the student's educational goals are protected. This assessment is particularly crucial for students who are close to graduation and for students who want to ensure that their academic work will allow them to enter college. Although students may transfer to the school's alternative school or program at any time, it is encouraged that students who are receiving passing grades be required to finish a given semester before transferring, when possible;

- Counselors and/or teachers shall assist the pregnant or parenting student with gaining access to those classes necessary for the students to continue their adopted course of study while enrolled at the alternative school. If a desired or required class is not available at the alternative school site, then students shall, as possible, be allowed to attend such class(es) at a regular school site, and counselors shall assist the students with arranging enrollment in such class or arranging an approved alternative means to completing the prescribed course of study;

- Counselors at the students' originating school shall contact the receiving school to ensure that the transfer is complete and that all classes and credits were appropriately accounted for; and

- Students who are close to graduation should be informed that they have the right to participate in graduation at their home school.

C. Facilitating the Return of Students to Their Regular School

When students decide to return to their regular school, the same steps as were taken during the original transfer should be taken to ensure the proper transfer of credits and guarantee the students' achievement of their academic goals. To facilitate this transfer, the sending alternative school or program should contact the receiving school to make sure that the transfer is complete. School personnel should be aware that it is against the law for them to refuse a student the right to transfer back to their comprehensive school.

VI. RIGHT TO CONFIDENTIALITY AND TO CONSENT TO MEDICAL CARE

Legal counsel in each district should be consulted about whether minors in the state may consent to certain health services without the consent of their parent or guardian (such as reproductive health services and mental health counseling). To the extent that minors may consent to a health service without the consent of their parent or guardian, they will also be covered by the state's laws requiring confidentiality for health services. Accordingly, certain school officials will likely have a legal obligation to keep medical information about such services confidential. Breaching student's confidences can result in substantial legal liability for the school and the individuals involved.

A school district may want to inform parents and guardians of minors' rights to consent to health services and their right to confidentiality as to these services via such notification mechanisms as: (1) Emergency Cards which are signed by parents/guardians during the enrollment period and (2) as part of the parent/student handbook distributed to all parents during the enrollment period. School Districts may also publicize these policies on their web site.

A. Excused Absences to Receive Medical Care

Some states have laws allowing schools to permit students to leave school (without informing the student's parent or guardian of such absences) for the purposes of obtaining health services to which the minor may consent. Schools may require verification for such services such as a doctor's note, provided they do so for student absences related to all medical absences. Any such oral or written verification must not appear in the student's school records or any other files to which their parent or guardian may obtain access.

B. Students' Right to Confidentiality

To the extent that minors may consent to certain health services, they are the only individuals who may authorize school personnel to disclose the medical information gathered through these services, schools should protect these rights by abiding by the following guidelines:

- Schools shall maintain all medical records related to confidential health services in a separate file and ensure that this information is not included in the student's regular school file or record.

- Schools shall inform all personnel about a minor's rights to consent to health services, so that individuals do not illegally breach a student's confidences. In particular, school personnel shall be informed about whether or not they are bound by a duty of confidentiality. (For example, in California, any information, such as health services to which a minor may consent, given to a school counselor, mental health counselor, nurse, or physician is confidential and shall not be included in the student's official school record. Communications made to a school official such as a principal, teacher, or sports coach are not confidential, however, and may become part of the school record.)

California Women's Law Center, 2003

As part of minor consent laws, states will have exceptions to the requirement of maintaining confidentiality, such as a reasonable belief that disclosure is required to prevent harm to the student or others or to report child abuse or neglect claims.

Under no circumstances shall a school counselor disclose information deemed to be confidential to the pupil's parents when the school counselor has reasonable cause to believe that the disclosure would result in a clear and present danger to the health, safety, or welfare of the pupil.

All school personnel should be aware of their state's laws pertaining to mandatory reporting obligations. In California, for example, not all forms of statutory rape are considered child abuse, yet teachers and counselors conflate the two and tend to over-report, thereby betraying confidences. California's Mandatory Statutory Rape Reporting Act requires mandatory reports if the mandated reporter knows that the minor is under the age of 16 and is in a sexual relationship with an adult over the age of 21. Moreover, under California law, the fact that a teen is pregnant or has an STD does not in and of itself constitute a reasonable suspicion of child abuse. [21]

[21] Cal. Penal Code § 11166(a); Planned Parenthood Affil. Of Calif. v. Van de Kamp, 181 Cal. App. 3d 24 (1986).

VII. COMPLAINTS

Federal law provides procedures for filing complaints of discrimination based on an alleged violation of the civil rights of pregnant and parenting students. [In this section, districts should provide references to the district's policies regarding the process by which individuals may file complaints regarding violations of Title IX and violations of the District's sexual harassment and discrimination policies. Districts should also refer individuals to the Educational Equity Compliance Office or similar offices within the District and the state's Department of Education.]

Under Federal law, the United States Department of Education, Office of Civil Rights enforces Title IX.[22] A complaint with the Office of Civil Rights must be filed within 180 days of the alleged discrimination. Complaints should be sent to:

United States Department of Education
Office of Civil Rights
[Add address and phone number for local Office of Civil Rights]

All information regarding complaints of alleged violations of the civil rights of pregnant and parenting teens shall remain confidential, to the extent possible, and the individual complainant(s) shall not be retaliated against.

[22] U.S. Department of Education Office of Civil Rights at http://www.ed.gov/offices/OCR/complaintprocess.html.

EXHIBIT A: Physician's Referral Form

California Women's Law Center, 2003

PHYSICIAN'S REFERRAL FORM

STUDENT'S NAME: _____ DELIVERY DATE: _____

TEACHER'S NAME: _____ PHONE NUMBER: _____

NAME OF SCHOOL: _____

The following activities are part of this school's physical education program. Your guidance in developing a meaningful, safe physical education program for the above named student during her pregnancy is requested. We want to provide maximum activities to guide the student to a healthy lifestyle of appropriate activities. Please check activities which are appropriate for her participation during each phase of her pregnancy. All activities are listed n the Physical Education Frameworks published by the California Department of Education. Thank you for your cooperation and timely response.

ACTIVITIES	TRIMESTER				Recommend No Activity
	First	Second	Third	Postpartum 6 weeks	
SENSORIMOTOR/PERCEPTUAL MOTOR (kinesthetic, visual, tactile, auditory)					
LOCOMOTOR MOVEMENT (walking, jumping, skipping, galloping, running)					
NON-LOCOMOTOR MOVEMENT (swinging, twisting, bending, stretching, pushing/pulling)					
BALANCE (stunts, balance equipment, tricycle, scooter, beams)					
EYE-HAND COORDINATION (throwing, catching, bouncing, fine /gross motor, clapping)					
EYE-FOOT COORDINATION (kicking, dribbling, punting, trapping, rhythmic movement)					
GENERAL COORDINATION (swinging, climbing, sliding, jumping rope, tumbling)					
CREATIVE MOVEMENT (rhythmic movement, swaying, moving to music, mirroring movement)					
CONTRAINDICATED ACTIVITY:					
COMMENTS:					

_____

PHYSICIAN'S NAME PHONE NUMBER

_____

PHYSICIAN'S SIGNATURE

Physician Referral Form reprinted with permission from the California Department of Education, Cal-SAFE Program 2000

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